

REMARKS

Applicant respectfully requests further examination and reconsideration in view of the arguments set forth fully below. Claims 1-44 were previously pending in this Application. Within the Office Action, Claims 1-44 have been rejected. By the above amendments, Claims 19, 28, and 36 have been amended. No claims have been added or deleted. Accordingly, Claims 1-44 are pending in the application.

Claim Rejection - 35 U.S.C. §102

Claims 19-23, 28-32, and 36-40 have been rejected under 35 U.S.C. §102(e) as being anticipated by Howard et al. (U.S. Patent Application Publication No. 2004/0103064).

Directing attention to MPEP 2131, the threshold issue under Section 102 is whether a *prima facie* case for anticipation has been established. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987)”. “The identical invention must be shown in as complete detail as is contained in the ...claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1566 (Fed. Cir. 1989).

Amended Claim 19 recites a system for downloading content, comprising: a removable memory, the removable memory including authentication data, the authentication data including a predetermined level of content access; an electronic device configured to receive the removable memory; and a server, wherein when the electronic device accesses the server, the removable memory is authenticated by reading the authentication data from the removable memory and determining the predetermined level of content access, and further wherein once authenticated, content according to the predetermined level of content access is downloaded from the server to the removable memory.

Applicant respectfully submits that Howard fails to disclose content being downloaded from a server to a removable memory. Howard merely discloses transferring content from a content server to a user PC (Paragraph 0025). On Pages 7 and 8 of the Office Action dated February 18, 2009, it is recognized that Howard “fails to disclose downloading the content from the server to the removable memory.” However, it is asserted that it would have been obvious to one of ordinary skill in the art to have incorporated this feature from Hori et al. (U.S. Patent Application Publication No. 2004/0010467) within Howard. Applicant addresses this obviousness argument below with respect to the §103 rejection of Claims 1, 10, and 44.

Accordingly, Applicant respectfully submits that Howard fails to disclose each and every element of Claim 19. Therefore, Applicant respectfully submits that Claim 19 is not anticipated by Howard.

Applicant respectfully submits that the same arguments made above with respect to the patentability of Claim 19 are also applicable to the patentability of independent Claims 28 and 36 as well.

Since Claims 20-23, 29-32, and 37-40 depend from Claims 19, 28, and 36, respectively, Applicant respectfully submits that Claims 20-23, 29-32, and 37-40 are all also patentable as they contain all of the limitations of their respective parent claims.

Therefore, Applicant respectfully submits that Claims 19-23, 28-32, and 36-40 are patentable over the cited prior art and are currently in condition for allowance. Reconsideration and withdrawal of the rejection is respectfully requested.

Claim Rejection - 35 U.S.C. § 103

Claims 1-18 and 44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Howard in view of Hori et al. (U.S. Patent Application Publication No. 2004/0010467).

For a §103 obviousness rejection to be proper, the burden of establishing that all elements of the invention are disclosed in the prior art must be met; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. MPEP 2143.

Claim 1 recites a method of downloading content from a server to an electronic device, comprising: storing authentication data on a removable memory, wherein the authentication data includes a predetermined level of content access; accessing the server with the electronic device; authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access; and downloading the content from the server to the removable memory according to the predetermined level of content access.

As discussed above, Howard fails to disclose content being downloaded from a server to a removable memory. Howard merely discloses transferring content from a content server to a user PC (Paragraph 0025). On Pages 7 and 8 of the Office Action dated February 18, 2009, it is recognized that Howard “fails to disclose downloading the content from the server to the removable memory.” However, it is asserted that Hori discloses downloading content from the

server to the removable memory and that it would have been obvious to one of ordinary skill in the art to have incorporated this feature of Hori's invention within Howard to include downloading the content from the server to the removable memory. Within the Office Action, it is argued that the motivation would be to prevent distributed copyrighted data from being replicated without permission of the copyright owner.

Applicant respectfully disagrees with this assertion. The invention of Howard operates under the principle that the content is downloaded to the user PC, not the removable memory (Paragraph 0025). Modifying the invention of Howard to download the content to the removable memory instead of the user PC would change its principle of operation. According to MPEP 2143.01(VI), if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. Therefore, since the proposed modification would change the principle of operation of Howard, Applicant respectfully submits that the teachings of the prior art references are not sufficient to render the claims *prima facie* obvious.

Furthermore, there is no indication in Hori that downloading the content to the removable memory instead of the user PC would, on its own, prevent distributed copyrighted data from being replicated without permission of the copyright owner. On the contrary, it appears that this prevention of impermissible replication relies on the entirety of the invention of Hori, including a complex data storage structure that comprises a plurality of authentication data hold means, a select means, a key hold means, a first decryption means, a session key generation means, a session key encryption means, and a session key decryption means. Modifying Howard to include all of these features would significantly, unnecessarily, and undesirably complicate and increase the cost of the invention of Howard.

Additionally, since it is unclear which elements of Hori are believed to be necessary to prevent distributed copyrighted data from being replicated without permission of the copyright owner, Applicant respectfully requests that the specific features of Hori be identified which should be incorporated into Howard for the asserted motivation of preventing impermissible replication. As stated above, Applicant believes that Hori's prevention of impermissible replication relies on factors other than downloading of the content to the removable memory.

Therefore, Applicant respectfully submits that the cited prior art fails to render obvious all of the elements of Claim 1. Accordingly, Applicant respectfully submits that Claim 1 is patentable over the cited prior art.

Applicant respectfully submits that the same arguments made above with respect to the patentability of Claim 1 are also applicable to the patentability of Claims 10 and 44.

Since Claims 2-9 and 11-18 depend from Claims 1 and 10, respectively, Applicant respectfully submits that Claims 2-9 and 11-18 are also patentable as they contain the same limitations as their respective parent claims.

Therefore, Applicant respectfully submits that Claims 1-18 and 44 are patentable over Howard in view of Hori. Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

For the reasons given above, the applicant respectfully submits that the claims are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
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Dated: June 12, 2009 By: /Jonathan O. Owens/

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